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Decision

Matter of: Moreland Corporation

File: B-291086

Date: October 8, 2002

Robert J. Symon, Esq., and Stasia Broadwater, Esq., Spriggs & Hollingsworth, for the protester.

Phillipa L. Anderson, Esq., Dennis Foley, Esq., and Philip Kauffman, Esq.,
Department of Veterans Affairs, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Exclusion of protester's lower-rated, lower-priced proposal for the construction and lease of an outpatient clinic from the competitive range was reasonable where the protester failed to address material concerns identified by the agency in its revised proposal.

DECISION

Moreland Corporation protests the exclusion of its proposal from the competitive range and award of a contract to William J. Brant & Associates under solicitation for offers (SFO) No. V101-183R-629-006-01, issued by the Department of Veteran's Affairs (VA) for the design, construction and lease of an outpatient clinic in Baton Rouge, Louisiana.

We deny the protest.

The SFO, issued October 29, 2001, requested cost proposals for a 15-year lease with one 5-year renewal option. SFO ¶ 1.4. Delivery of space was required by November 30, 2003. SFO ¶ 1.6. Award was to be made to the offeror whose proposal represented the best value to the government, price and other factors considered. SFO, Cover Letter, Oct. 29, 2001. The following evaluation factors were set forth in descending order of importance: (1) technical quality, including the quality of the building, the design concept and the quality of the site; (2) the adequacy and efficiency of the proposed operations and maintenance plans; and (3) the offeror's qualifications, including past performance. SFO ¶ 2.2. Price evaluation was to be based on the annual price per net usable square foot,

including any option periods. Technical factors, when combined, were equal to price.

Five offerors, including Moreland and Brant, submitted fourteen different proposals and alternate proposals. Based on initial evaluation by the technical evaluation board (TEB) and a price analysis of offers, the contracting officer included all proposals in the competitive range. Oral discussions were conducted with each competitive range offeror. On February 28, 2001, during oral discussions, among other things, Moreland was advised that the funds proposed for the required lessor funded account for maintenance, capital repair and replacement were insufficient based on the government's cost estimates to maintain and/or replace building systems in a building this size. Moreland was further advised that funds specified in its cost proposal for operating expenses were insufficient to maintain a building of this size. The agency also discussed the adequacy and efficiency of Moreland's operation and maintenance plan. For example, the agency asked Moreland how it would manage the property and whether Moreland, located in California, proposed to have a local firm in the Baton Rouge area designated as the property manager or whether the firm would act as the property manager. Moreland advised the agency that local service contractors would be hired to perform maintenance as required by the SFO, but that it would manage the property through its main office in California, and, when the main office was closed, an answering service would be used. Subsequent to the February 28 oral discussions, on March 6, the agency sent Moreland an e-mail advising of the agency's concerns with respect to Moreland's low annual cost for operating expenses and its low maintenance account. Additionally, the agency requested:

[E]xplain in detail how you will maintain the facility per [the SFO requirements], especially the items to be done twice a week, if you do not have a local, designated maintenance person. Explain if you will have local contracts in place to perform maintenance and repair work and the process the clinic will have to go through in order to get service. Explain how phone calls to your office 3 thousand miles away with a 3-hour time difference will allow one hour response times for emergencies 24 hours a day, 7 days a week. Will local contracts be in place at the time of occupancy and will the clinic be given the names and phone numbers of the local contractors to call directly. We would want the flexibility to do this in emergencies, and cannot see how it can be accomplished with the present property management plan.

Exh. 38, e-mail to Steve Moreland, March 6, 2002.

Final proposal revisions were requested on March 7, 2002, and proposal revisions were received on March 25. Moreland's revised offer increased the funds in the maintenance account. However, Moreland did not address the agency's specific concerns regarding Moreland's operations and maintenance plan. Moreland also did not address the agency's concern that its projected operating expenses were too low.

Since Moreland had failed to address these concerns, among others, its proposal was eliminated from the revised competitive range. By letter dated July 16, 2002, Moreland was notified of its elimination from the competitive range. The remaining competitive range offerors were requested to extend their offers until August 15, 2002 and were requested to provide additional information. Agency Report, exh. 61, Request for Bid Extension and Additional Information. On July 22, after review of the additional information, the contracting officer determined that Brant's offer represented the best value to the government. A lease was subsequently awarded to Brant. After receiving a pre-award debriefing, Moreland filed this protest with our Office on August 7.

Moreland essentially argues that the agency failed to properly evaluate its revised proposal and that therefore the elimination of the proposal from the competitive range was unreasonable. Moreland argues that all the VA's concerns were addressed in Moreland's original proposal and during discussions.

If the agency's evaluation of proposals is reasonable, in accordance with the solicitation criteria, and does not violate law or regulation, there is nothing improper in the agency's making more than one competitive range determination and removing a firm from further consideration. Labat-Anderson Inc., B-246071.4, Oct. 9, 1992, 92-2 CPD ¶ 244 at 6.

As quoted above, the protester was specifically advised during written negotiations to address its low operating expenses and to specifically explain in detail how it would maintain the facility. The record further shows that the protester did not address the agency's concerns in writing in its revised proposal. Based on the agency's detailed e-mail request, it should have been reasonably clear to Moreland that the oral discussions had not resolved the agency's concerns. The record shows that not until the protester filed its comments to the agency report for this protest did it furnish any detailed written explanation of its operation and maintenance plan and the reasonableness of its operating expenses. Since agencies are required to evaluate proposals based on the content of the proposal itself, an offeror in a negotiated procurement must demonstrate its capabilities within the four corners of its proposal. Northwestern Travel Agency, Inc., B-244592, Oct. 23, 1991, 91-2 CPD ¶ 363 at 6. Since the protester's proposal failed to address the adequacy of its operations and maintenance plan as required by the SFO or to establish the reasonableness of its operating expenses, the agency reasonably eliminated the proposal from the competitive range.¹

¹ The protester alleges unequal competition because Brant like the protester indicated in its original proposal that it would hire local contractors to perform the maintenance and repair work and that it would manage the property from non-local home offices. However, the record shows that Brant in its final proposal revision
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With respect to Moreland's challenge to the agency's decision to conduct further discussions with competitive range offerors and to the agency's source selection decision, since we conclude that Moreland was properly excluded from the revised competitive range, Moreland is not an interested party to raise these issues.

4 C.F.R. § 21.0(a) (2002); A Travel Passport, Inc.; Global Express Travel Servs., Inc., B-255383.2 et al., 94-1 CPD ¶ 171 at 7.

The protest is denied.

Anthony H. Gamboa
General Counsel

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indicated that after award it would hire a local property manager to manage the maintenance and repair work.